

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control _____ Department or Agency Secretary of State
 Rule No. 820-2-10-18
 Rule Title: UOCAVA State Written Plan for federal Primary Runoff Election
☐ New ☒ Amend ☐ Repeal ☐ Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer J. H. Merrill

Date Nov. 8, 2017

REC'D & FILED

(DATE FILED)
(STAMP)

NOV 09 2017

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LEGISLATIVE REF SERVICE

Alabama Secretary of State

NOTICE OF INTENDED ACTION

AGENCY NAME:

Office of the Secretary of State

RULE NO. & TITLE:

820-2-10-.18 UOCAVA State Written Plan for Federal Primary Runoff Election

INTENDED ACTION:

Amend Rule

SUBSTANCE OF PROPOSED ACTION:

Deletes sections due to the passage of Act # 2017-340 that states that, " If an elector votes in a primary election, he or she may vote in a subsequent primary runoff election only if he or she voted in the primary election of the same political party for which the runoff election is being held".

TIME, PLACE, MANNER OF PRESENTING VIEWS:

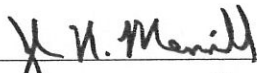
Views may be presented orally or in writing and should be addressed to Brent Beal, Office of the Secretary of State, P.O. Box 5616, Montgomery, AL 36130; (334) 353-7857.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

January 4, 2018

CONTACT PERSON AT AGENCY:

Brent Beal, Office of the Secretary of State, State Capitol Suite E-201, 600 Dexter Avenue, Montgomery, AL 36130; (334) 353-7857.



Secretary of State

1 820-2-10-.18 UOCAVA State Written Plan for Federal Primary
2 Runoff Election.
3

4 (1) Pursuant to 52 U.S.C. Section 20302(a)(9), these rules
5 provide the state written plan for any Federal primary runoff
6 election.
7

8 (a) Federal law provides that, when a UOCAVA voter has
9 requested a ballot for a federal election by the 45th day before
10 that election, the State must transmit the ballot to that voter
11 by the 45th day before the election. 52 U.S.C. Section
12 20302(a)(8)(A). The U.S. District Court for the Middle District
13 of Alabama and the Eleventh Circuit Court of Appeals have held
14 that this provision applies to federal runoff elections.
15

16 Thus, when a UOCAVA voter requests to vote in a federal primary
17 runoff election on or before the 45th day before such election,
18 the ballot must be transmitted to the voter on or before the
19 45th day before the primary runoff election by the method of
20 transmission requested by the voter.
21

22 For a variety of reasons, it has long been Alabama's preference
23 to hold any runoff elections, also known as second primary
24 elections, less than 45 days after the first primary election.
25 Separating the elections sufficiently to allow for the
26 determination of the primary election results and the printing
27 and transmission of the primary runoff ballots would mean more
28 than two months between the two elections. Accordingly, the
29 State recently implemented instant runoff ballots for UOCAVA
30 voters in order to address the State's concerns about the
31 primary schedule while protecting the rights of UOCAVA voters to
32 participate in federal elections and ensuring the State's
33 compliance with federal law.
34

35 This chapter applies only to UOCAVA voters in the circumstances
36 described below. It provides procedures for election officials
37 to follow when there is a federal primary election in a county
38 or portion of a county where three or more candidates have
39 qualified with the same political party to run for the same
40 federal office (other than the office of President).
41

42 These rules do not alter in any way the current election cycle.
43

44 Instant runoff ballots are not needed for a Presidential race,
45 regardless of the number of candidates qualifying for that
46 office, because Alabama does not hold a second primary election
47 in that race.

1
2 (b) To facilitate the participation of UOCAVA voters in
3 Alabama's federal second primary elections, ballot preparation
4 under the UOCAVA State Written Plan for Federal Primary Runoff
5 Election shall be as follows.
6

7 1. When three or more candidates have qualified with the
8 same political party to run for the same federal office (other
9 than the office of President), the probate judge shall prepare
10 both a special federal ballot and a special state ballot for the
11 primary election. The special federal ballot materials shall
12 include instructions prepared by the Secretary of State. These
13 instructions shall explain how a UOCAVA voter casts his or her
14 vote using the special federal instant runoff primary ballot.
15

16 2. If necessary, the probate judge shall prepare a
17 special state ballot for a second primary election.
18

19 (c) The content of special federal and special state
20 ballots shall be as follows.
21

22 1. A special federal ballot shall be used in a federal
23 instant runoff primary election. The special federal ballot
24 shall contain a list of all federal offices (other than the
25 office of President) for which three or more candidates have
26 qualified with the same political party to run for the same
27 federal office and said candidates' names. The special federal
28 ballot shall permit the UOCAVA voter to cast a ballot in a
29 federal instant runoff primary election by indicating his or her
30 order of preference for each candidate for each federal office
31 listed on the ballot. UOCAVA voters may also use this ballot to
32 participate in the second federal primary election alone, in
33 which case it shall be specifically labeled "Runoff Only." The
34 labeling may be done in the ballot preparation or manually prior
35 to its transmission to the UOCAVA voter.
36

37 2. A special state ballot shall be used when there is the
38 possibility of a federal primary runoff election. This ballot
39 shall contain the office of President in presidential election
40 years, any federal offices for which only two candidates have
41 qualified with the same political party to run for the same
42 office and said candidates' names, all state and county offices
43 and said candidates' names, and any referenda to be voted on in
44 the primary election.
45

46 3. If necessary, a special state ballot for a second
47 primary election shall be used. This ballot shall contain any

1 state or county offices for which a second primary election is
2 required, the names of the candidates who have qualified for
3 said offices, and any referenda to be voted on in a second
4 primary election.

5
6 (d) ~~Except with respect to cross-over voting, which is~~
7 ~~addressed below, issuance~~ Issuance and transmission of ballots
8 shall be as follows.

9
10 1. When a UOCAVA voter requests an absentee ballot and
11 votes in a precinct where a federal race with the potential for
12 a runoff is on the ballot, the absentee election manager shall
13 initially issue both a special federal ballot and a special
14 state ballot.

15
16 2. The ballots shall be transmitted together, with
17 provisions made for both ballots to be returned together.

18
19 3. If the UOCAVA voter has requested a runoff ballot, and
20 there is the potential for a runoff in a non-federal race, or if
21 any referenda are contained on a special state second primary
22 election ballot, the absentee election manager shall issue the
23 special state second primary election ballot to the voter when
24 it is ready.

25
26 ~~(e) In the event of authorized cross-over voting, issuance~~
27 ~~and transmission of ballots shall be as follows.~~

28
29 1. ~~Alabama law authorizes the political parties holding a~~
30 ~~primary election to permit or prohibit cross-over voting. Code~~
31 ~~of Ala. 1975, Section 17-3-7. Because the instant runoff~~
32 ~~legislation does not explicitly prohibit UOCAVA voters from~~
33 ~~taking advantage of any political party's decision to allow~~
34 ~~voters to cross-over, and because federal law is designed to~~
35 ~~enable UOCAVA voters to have the same electoral opportunities as~~
36 ~~Alabama's non-UOCAVA voters, these rules provide for cross-over~~
37 ~~voting for UOCAVA voters.~~

38
39 2. ~~When a UOCAVA voter applies to participate in the~~
40 ~~primary election of one political party and the primary runoff~~
41 ~~election of a second political party, and that second political~~
42 ~~party allows for cross-over voting, the absentee election~~
43 ~~manager shall initially issue the requested primary election~~
44 ~~ballot and the federal instant runoff primary election ballot~~
45 ~~(which shall be labeled "Runoff Only"). If the requested first~~
46 ~~primary ballot is also a special federal instant runoff primary~~
47 ~~election ballot - and thus only contains federal races - then~~

1 ~~the absentee election manager shall also issue the special state~~
2 ~~ballot.~~

3
4 ~~3. The ballots shall be transmitted together, with~~
5 ~~provisions made for both ballots to be returned together.~~

6
7 ~~4. If the UOCAVA voter has requested a runoff ballot, and~~
8 ~~there is the potential for a runoff in a non-federal race, or if~~
9 ~~any referenda are contained on a special state second primary~~
10 ~~election ballot, the absentee election manager shall issue the~~
11 ~~special state second primary election ballot to the voter when~~
12 ~~it is ready.~~

13
14 (e) ~~(f)~~ UOCAVA voters may participate in Alabama's
15 federal primary election and any second federal primary
16 elections using the Federal Write-In Absentee Ballot ("FWAB").

17
18 1. UOCAVA voters who vote using a Federal Write-In
19 Absentee Ballot ("FWAB") in a federal primary election in which
20 three or more candidates have qualified with the same political
21 party to run for the same federal office may rank their choices
22 for such candidates on the FWAB in the same manner provided for
23 in Code of Ala. 1975, Section 17-13-8.1(c)(2).

24
25 ~~2. UOCAVA voters participating in the primary election of~~
26 ~~one political party and the primary runoff election of a second~~
27 ~~political party, when that second political party allows for~~
28 ~~cross-over voting, may specify their choice for the primary~~
29 ~~election and may then rank their choices for the federal runoff~~
30 ~~election candidates on the FWAB in the same manner provided for~~
31 ~~in Code of Ala. 1975, Section 17-13-8.1(c)(2).~~

32
33 2.3. The rules contained in the UOCAVA State Written Plan
34 for Federal Primary Runoff Election shall govern the receipt,
35 counting, canvassing, storage, and reporting of FWAB ranked
36 ballots cast in the first federal primary election, and second
37 federal primary election, if necessary.

38
39 (f) ~~(g)~~ The deadline for receipt of ballots shall be as
40 follows.

41
42 1. Special Federal Ballot, FWAB, or Special State Ballot for
43 Primary Election.

44
45 (i) If received by mail, no special federal ballot, FWAB,
46 or special state primary ballot shall be opened or counted in
47 the first federal primary election unless the absentee ballot is

1 postmarked as of the date of the first primary election and
2 received by the absentee election manager no later than noon
3 seven days after the first primary election.

4
5 (ii) If received electronically, no special federal ballot
6 or special state primary ballot shall be opened or counted in
7 the first federal primary election unless the absentee ballot is
8 received by midnight on the date of the first primary election.

9
10 2. Special Federal Ballot, FWAB, or Special State Ballot for
11 Second Primary Election.

12
13 (i) If received by mail, no special federal ballot, FWAB,
14 or special state ballot for a second primary election shall be
15 opened or counted unless the absentee ballot is postmarked as of
16 the date of the second primary election and received by the
17 absentee election manager no later than noon seven days after
18 the second primary election.

19
20 (ii) If received electronically, no special federal ballot
21 or special state ballot for a second primary election shall be
22 opened or counted unless the absentee ballot is received by
23 midnight on the night of the federal primary runoff election.

24
25 ~~(g)~~ ~~(h)~~ The determination as to whether the special
26 federal ballot is entitled to be counted shall be as follows.

27
28 1. For a federal primary election in which three or more
29 candidates have qualified with a single political party to run
30 for the same federal office (other than the office of
31 President), where the voter is required to complete an absentee
32 ballot affidavit, the absentee election poll officials provided
33 for in Code of Ala. 1975, Section 17-11-11 shall follow the
34 procedures set forth in Code of Ala. 1975, Section 17-11-10 to
35 determine whether the UOCAVA absentee ballot affidavit
36 establishes that the UOCAVA voter is entitled to vote by
37 absentee ballot. Where the voter is required to complete an
38 overseas voter certificate in accordance with Code of Ala. 1975,
39 Section 17-11-46, the absentee election manager shall determine
40 whether the overseas voter certificate establishes that the
41 UOCAVA voter is entitled to vote by absentee ballot.

42
43 2. The determination in paragraph (1) governs all ballots
44 submitted together, including for any second federal primary
45 election, such that no new determination as to the adequacy of
46 the same absentee ballot affidavit, or overseas voter
47 certificate, as applicable, need be made.

1
2 3. For any ballots submitted separately, such as stand-
3 alone runoff ballots or a special state ballot for a second
4 primary election, where the voter is required to complete an
5 absentee ballot affidavit, the absentee election poll officials
6 provided for in Code of Ala. 1975, Section 17-11-11 shall follow
7 the procedures set forth in Code of Ala. 1975, Section 17-11-10
8 to determine whether the UOCAVA absentee ballot affidavit
9 establishes that the UOCAVA voter is entitled to vote by
10 absentee ballot. Where the voter is required to complete an
11 overseas voter certificate in accordance with Code of Ala. 1975,
12 Section 17-11-46, the absentee election manager shall determine
13 whether the overseas voter certificate establishes that the
14 UOCAVA voter is entitled to vote by absentee ballot.
15

16 4. If the absentee election poll officials or absentee
17 election manager, as applicable, determine(s) that the UOCAVA
18 absentee ballot is entitled to be counted, upon the closing of
19 the polls, the ballot shall be counted in accordance with state
20 law.
21

22 5. If the absentee election poll officials determine that
23 an absentee ballot affidavit is insufficient and therefore the
24 UOCAVA absentee ballot is not entitled to be counted, a record
25 shall be made as to the reason for rejection of the ballot and
26 said record of the reason for rejection of any ballot shall be
27 provided to the absentee election manager. If the absentee
28 election manager determines that an overseas voter certificate
29 is insufficient and therefore the UOCAVA absentee ballot is not
30 entitled to be counted, a record shall be made and maintained as
31 to the reason for rejection of the ballot. The absentee election
32 manager shall thereafter record in the statewide election
33 management system which absentee ballots have been accepted or
34 rejected and if rejected, the reason therefor.
35

36 ~~(h)(i)~~ The method for counting the special federal
37 ballot and FWAB and securing same shall be as follows.
38

39 1. In a federal primary election in which the special
40 federal ballot or FWAB is used, the first choice preference of
41 each voter shall be the vote counted as cast by the voter. Only
42 the first choice preference votes of the voters shall be counted
43 or divulged during the count or upon the conclusion of the
44 primary election. The total count of first choice preference
45 votes received by each federal candidate shall be added to the
46 count of votes produced for candidates pursuant to Section 17-
47 13-13.

1
2 2. Upon the conclusion of this count, the special federal
3 ballots or FWABs shall be returned to the absentee election
4 manager, who shall secure and maintain the ballots until the
5 time for counting the ballots for any second primary election.
6 Any FWAB on which the UOCAVA voter has written in a single
7 choice in the federal Congressional races, ~~without crossing over~~
8 ~~for the runoff~~, and where the voter's single choice is facing
9 only one opponent is a FWAB which has not registered a vote for
10 any potential federal runoff election, and it may be returned to
11 the absentee election manager or secured along with the
12 traditional ballots pursuant to governing state law.

13
14 3. If a federal second primary election is necessary, the
15 vote to be counted as cast by each voter shall be the highest
16 designated choice of the voter of the two candidates
17 participating in the contest. In the event that the voter has
18 only ranked one choice, the vote will be counted for that
19 candidate if he or she is a candidate in the federal runoff
20 election. The total count of the votes received by each
21 candidate shall be added to the count of votes pursuant to
22 Section 17-13-18.

23
24 4. If, on the special federal ballot, the voter marks an
25 "X" or places a check mark by only one candidate's name, circles
26 only one candidate's name, or otherwise clearly designates his
27 or her choice for only one candidate, that candidate shall be
28 counted as the voter's first choice candidate.

29
30 5. The votes for any office listed on the special federal
31 ballot or FWAB shall be canvassed, certified, and announced in
32 the manner provided for in Section 17-13-17 and Section 17-13-
33 18.

34
35 6. Upon the conclusion of the first federal primary
36 election, and the second federal primary election, if necessary,
37 the special federal ballots and FWABs shall be stored with the
38 records of election as required by state law, but shall be
39 segregated from regular absentee ballots and labeled.

40
41 *(i) (j)* The method for counting the special state ballot
42 shall be as follows.

43
44 1. The special state ballot shall be counted in the
45 manner provided for in Section 17-13-13 or Section 17-13-18, as
46 applicable to a primary election or second primary election.
47

1 2. The votes for any office listed on the special state
2 ballot shall be canvassed, certified, and announced in the
3 manner provided for in Section 17-13-17 and Section 17-13-18.
4

5 3. If the absentee election officials determine that an
6 absentee ballot affidavit is insufficient and therefore the
7 UOCAVA absentee ballot is not entitled to be counted, a record
8 shall be made as to the reason for rejection of the ballot and
9 said record of the reason for rejection of any ballot shall be
10 provided to the absentee election manager. If the absentee
11 election manager determines that an overseas voter certificate
12 is insufficient and therefore the UOCAVA absentee ballot is not
13 entitled to be counted, a record shall be made and maintained as
14 to the reason for rejection of the ballot. The absentee election
15 manager shall thereafter record in the statewide election
16 management system which absentee ballots have been accepted or
17 rejected and if rejected, the reason therefor.
18

19 Authors: Jean Brown; Edward Packard

20 Authority: 52 U.S.C. Section 20302(a)(9); Code of Ala. 1975,
21 Section 17-13-8.1 (2015).

22 History: Amended: _____.

23 New Rule: Filed February 5, 2016; effective March 21, 2016.